

## II. REMARKS:

The Office expressed concern relative to the claims under 35 USC §102 and 35 USC §103 as based on the Torrez and Adinolfi references.

35 USC §102 Concerns: The Office expressed novelty concerns as to claims 1, and its dependent claims, 2, 3 and 11 as based on US 6,610,916 (hereinafter referred to as Torrez). In response, the Assignee has herein amended claim 1. Limitations of claim 1 as amended herein that are not disclosed in Torrez (explanatory comments following each limitation are presented in italics) include:

“wherein said pivot coupler enables rotatable motion of said item support rail about said substantially vertical axis”, *where such axis is described by the following:* “wherein at least one of said couplers is a pivot coupler that pivotally couples one of said item support rails to one of said rail support legs, said one of said rail support legs defining a substantially vertical axis” *Torrez may indeed disclose a coupler that allows rotation of a coupled item support rail about a vertical axis (see Fig. 1d of Torrez), but that vertical axis is not defined by the coupled rail support leg (indeed, in Torrez, such vertical axis is independent of the coupled rail support leg, and is instead defined by thumbscrew 227 and where it passes through flanges 226 (see Figs. 1d and 5b of Torrez)).*

“wherein said pivot coupler enables substantially purely vertical translatory height adjustment of said one of said item support rails relative to said one of said rail support legs to which it is pivotally coupled” *Torrez, in using screws through holes in flanges and coupled rails and legs to retain such rails and legs in desired positions, does not allow for purely vertical translatory height adjustment of rails relative to coupled legs.*

“wherein said pivot coupler establishes at least one cable port and cable channel” *Torrez does not disclose a cable port or a cable channel established by the coupler.*

Of course, because limitations of an independent claim serve to limit claims depending therefrom, such limitations also do not appear in any claims depending from claim 1. It is also of note that the absence of a claim limitation from this or other lists or discussion of non-disclosed limits should not necessarily be interpreted as a belief that such limitations appear in a prior art reference.

35 USC §103 Concerns: The Office expressed obviousness concerns as to claims 4-9 in view of Torrez, and claims 10, 13, 14, 17-23 and 49 in view of Torrez and US Pat. No. 5,929,355 (hereinafter referred to as Adinolfi). What follows is a discussion, grouped according to the two independent claims remaining in the case (claims 1 and 13), of why such claims are non-obviousness in view of Torrez, and in view of Torrez and Adinolfi.

Independent Claims 1 and 13 as Amended are Not Prima Facie Obvious: Assignee first submits that independent claims 1 and 13 (and their dependent claims) are not *prima facie* obvious. As the Examiner is well aware, “[T]he examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness.” MPEP 2142. The MPEP goes on to

state that “To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP 2143, Basic Requirements of a *Prima Facie* Case of Obviousness. Assignee submits that these three criteria can not be met with respect to the 35 U.S.C §103 and explains its position as follows:

*Obviousness Concerns As to Claims Depending from Claim 1:* Again, the Office expressed obviousness concerns as to claims 4-9 (all of which depend from claim 1) in view of Torrez. In response, the Assignee would first state that, as the Office is well aware, where an independent claim is non-obvious, so too are claims depending therefrom. As such, what immediately follows is a discussion of why claim 1 is non-obvious relative to Torrez; claims depending therefrom (claims 2, 4-8, 10, 11, 50 and 51) will be at least as non-obvious as their base independent claim, claim 1.

Torrez Does Not Teach or Suggest All Claim Limitations of Independent Claim 1: Claim 1, as amended herein, includes the following limitations, none of which are taught, or even suggested by Torrez (as explained above):

“wherein said pivot coupler enables rotatable motion of said item support rail about said substantially vertical axis”, *where such axis is described by the following:* “wherein at least one of said couplers is a pivot coupler that pivotally couples one of said item support rails to one of said rail support legs, said one of said rail support legs defining a substantially vertical axis”

“wherein said pivot coupler enables substantially purely vertical translatory height adjustment of said one of said item support rails relative to said one of said rail support legs to which it is pivotally coupled” and

“wherein said pivot coupler establishes at least one cable port and cable channel”.

Torrez, in relying on screws through flange holes of its coupler (and through the coupled rails and legs), does not suggest rotation of the coupled rail about a substantially vertical axis defined by the coupled leg, nor enablement of purely vertical translatory height adjustment. There also appears no suggestion or motivation in Torrez to modify Torrez to arrive at the subject matter of claim 1. It is also of note that, as Torrez does not disclose all limitations of claim 1 as amended, claim 1 cannot be properly characterized as a mere rearrangement of Torrez’ parts.

New dependent claim 50 (which depends from claim 1) adds a limitation - coupler rotation - that Torrez, in using screws through flanges and rails/legs, certainly does not suggest, and indeed would appear teach away from.

New dependent claim 51 (which also depends from claim 1) adds a limitation relative to the absence of the need for pre-drilling for both apparatus installation and cable entry into a

coupled rail. Torrez, however, clearly does require such predrilling (of course, an additional, and labor intensive, step). Indeed, the very fact that Torrez requires such additional step suggests the unlikelihood of the success of a design (as in claim 51) where pre-drilling is not required. Certainly if a design that did not require pre-drilling were merely an obvious step away from the Torrez inventors, they would have stumbled upon it - and gladly (especially given its advantages relative to the absence of any need for pre-drilled holes in coupled rails/legs). They did not, suggesting the non-obviousness of claim 51.

*Obviousness Concerns As to Claim 13 and Claims Depending Therefrom:* Again, the Office expressed obviousness concerns as to claim 13 and certain claims depending therefrom (claims 14, 17-23 and 49) in view of Torrez and Adinolfi. What immediately follows is a discussion of why claim 13 is non-obvious relative to Torrez and Adinolfi; claims depending therefrom (claims 14, 17, 19, 22, 23 and 52-54) will be at least as non-obvious as their base independent claim, claim 1.

**Torrez and Adinolfi Do Not Teach or Suggest All Claim Limitations of Independent Claim 13, Either Alone or In Combination:** Claim 13, as amended herein, includes the following limitations, none of which are taught, or even suggested by Torrez or Adinolfi:

“wherein at least one of said pivot couplers establishes two cable ports and a cable channel between said two cable ports”, and

“wherein each of said cables passes from externally of said one of said rail support legs, through at least a portion of said cable channel, through one of said cable ports to internally of said one of said item support rails”

Indeed, in the Adinolfi reference, the cable bypasses the coupler (see col. 2, lines 65-68, and Fig. 1 (in particular the portion of the cable from part 30-part 32)). It would appear that the Adinolfi inventors, in conceiving a coupler that allows both purely vertical rail adjustment and rotation of the coupler itself about a vertical axis, could not quite figure out how to pass a cable through the coupler. So, instead, they simply bypassed the coupler with the cable entirely (again, see Fig. 1) - a fact that by itself teaches away from the inventive technology of claim 13 (which combines vertical rail adjustment, coupler rotation, *and* cable passage through the coupler). At the very least, the Adinolfi design suggests the unlikelihood of success of claim 13.

#### Additional Information

The amendments submitted herein should be understood to be made as a practicality only, and should not to be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Relatedly, it should be understood that the amendments made herein are made for tangential issues of clarity and as a matter of the Office’s convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights which the Assignee may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and

even as amended, the Assignee expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in direct or equivalency coverage is believed to exist, and no change or reduction in direct or equivalency coverage is intended through the presentation of this amendment.

Further, the office and any third persons interested in potential scope of this or subsequent applications should understand that broader claims may be presented at a later date in this or a continuation in spite of any preliminary amendments, other amendments, claim language, or arguments presented, thus there is not intention to disclaim or surrender any potential subject matter. It should be understood that such broader claims may require that any relevant prior art that may have been considered may need to be re-visited since it is possible that to the extent any amendments, claim language, or arguments presented in this application are considered as made to avoid such prior art, such reasons may be eliminated by later presented claims or the like. Both the examiner and any person otherwise interested in existing or later coverage or considering the possibility of an indication of disclaimer or surrender of potential coverage, should be aware that no such surrender or disclaimer is intended or exists in this application. Limitations such as arose in *Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313 (Fed. Cir 2007), or the like are expressly not intended in this or any subsequent matter related.

#### **IV. CONCLUSION:**

The Applicant, having addressed each of the concerns raised in the Office Action by amendment and/or explanation, respectfully requests reconsideration and withdrawal of the rejections and objections to the application. All claims now remaining in the application are believed to be in condition for allowance, which is requested at the Office's earliest convenience.

Dated this 10<sup>th</sup> day of November, 2009.

Respectfully Submitted,

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